

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT  
OPERATING PROCEDURES**

(As of December 1, 2009.)

Changes effective December 1, 2009 to the court's internal operations involve procedure Nos. 1, 5 and 9. The changes are highlighted below:

**1. Motions**

*(a) Number of Judges Necessary to Determine Motions.*

(1) *Ordinary Practice.* At least two judges shall act on requests for bail, denials of certificates of appealability, and denials of leave to proceed on appeal in forma pauperis. Ordinarily three judges shall act to dismiss or otherwise finally determine an appeal or other proceeding, unless the dismissal is by stipulation or is for procedural reasons. Three judges shall also act to deny a motion to expedite an appeal when the denial may result in the mooted of the appeal. All other motions shall be entertained by a single judge in accordance with the practice set forth in paragraph (c). In the interest of expediting a decision or for other good cause, a fewer number of judges than provided in these procedures may decide any motion.

(2) *En Banc Requests.* If en banc consideration of a motion is requested, no more than the normal number of judges required for such a motion need act on it. If en banc reconsideration of the decision on a motion is requested, the motion will be considered by the same judge or judges who acted on the motion originally and, if and to the extent necessary to constitute a panel of three, one or more members of the motions panel. A judge may request that any motion be considered by the court en banc.

(b) *Selection of Judges to Determine Motions.* The responsibility to handle motions shall be rotated among the judges. If a single judge to whom a motion is presented orders a response, the motion and response will ordinarily be presented to the same judge for ruling.

*(c) Motion Practice.*

(1) *Motions That May Require Immediate Action.* A staff attorney will read upon filing the following motions (whether labeled emergency or not): (i) for bond; (ii) for injunction; (iii) for stay of injunction; (iv) for stay of an agency order; (v) to dismiss appeals not by agreement; (vi) for leave to appeal from an interlocutory

order pursuant to 28 U.S.C. § 1292(b); (vii) to stay or recall the mandate; (viii) to supplement the record; and (ix) all other emergency motions. If the motion requires immediate action, it will be taken to the motions judge and, if necessary, a panel. If it does not require immediate action, the staff attorney will wait up to **fourteen days** for a response to be filed before taking the motion to the motions judge or panel.

(2) *Routine Motions.* Routine motions (see subparagraph (7)) will be given to court staff who will read the motion and any affidavit in support thereof as well as any response to the motion. The designated staff member is then authorized, acting pursuant to such general directions and criteria as the court prescribes, to prepare an order in the name of the court either granting or denying the motion or requesting a response to the motion. If the designated staff member has any questions about what action should be taken, the motions judge will be consulted. Once a panel has been assigned for the oral argument or submission of an appeal, or after an appeal has actually been orally argued or submitted for decision without oral argument, the court staff should consult the presiding judge on motions that would otherwise be considered routine.

(3) *Nonroutine Motions.* A staff attorney shall read each nonroutine motion (see subparagraph (7)) and then present it to the motions judge and, if necessary, the motions panel. The judge or panel will then advise the staff attorney as to the decision and direct that an order be prepared accordingly. The staff attorney will then prepare the order. If the order states detailed reasons for the decision, the staff attorney will take the original of the order to the motions judge or one of the judges on the motions panel to read and approve. The same procedure will be followed whenever a judge asks to see the prepared order before it is released.

(4) *Duties of Clerk of Court.* When an order is in final form and ready for release, copies of the order will be reproduced and mailed to the litigants and to any other persons who are affected by the order, such as the district court clerk, the district judge, the United States Marshal, *et al.* The clerk will make certain that the language of the order is technically proper.

(5) *Automatic Reconsideration When Response Filed After Ruling.* If a response to a motion is properly filed after the court has ruled on the motion adversely to the respondent, the motion and response will be reconsidered and a new order stating this fact and ruling on the motion shall be issued.

(6) *Record Keeping.* The clerk shall keep a record of all orders by date of entry and also place a copy of each order in the file folder of the appeal.

(7) *Classification of Motions and Actions by Court.* Motions and actions of the court are classified for purposes of this paragraph as follows:

Type	Classification
To extend time or to file instanter	Routine
To consolidate appeals	Routine
To hold briefing in abeyance	Routine
To expedite or schedule briefing	
(But see 1(a) <i>supra</i> .)	Routine
To intervene as of right	Routine
To withdraw exhibits for preparation of a brief by counsel of record or party appearing <i>pro se</i> prior to case being scheduled for oral argument	Routine
To listen to tapes of oral argument under supervision of the clerk's office	Routine
To withdraw as counsel in criminal cases when other counsel has filed	
or is simultaneously filing an appearance	Routine
To withdraw as counsel in civil cases	Routine
To correct error in the caption of a case	Routine
To withdraw a previously filed motion before the court has acted upon it	Routine
To file a deferred appendix	Routine
(generally denied)	
To dismiss by agreement (except in cases to which panels have already been assigned)	Routine
To supplement record	
(if no objection)	Routine
(with an item before district court)	Routine
(with item not clearly before district court)	Routine
(to deny with leave to renew after moving to correct record in district court pursuant to Fed. R. App. P.10(e))	Routine
For leave to appeal in forma pauperis (if denied without prejudice to renewal after district court denial)	Routine
(if denied for any other reason)	Nonroutine
(if granted)	Nonroutine
For leave to file brief amicus curiae	Nonroutine
For leave to file oversized brief	Nonroutine
To stay or recall mandate	Nonroutine
For appointment of counsel	Nonroutine
To postpone oral argument	Nonroutine
For certificate of appealability	
(if denied)	Nonroutine
(if granted)	Nonroutine
For leave to commence second or successive collateral attack	Nonroutine
To dismiss, not by agreement	Nonroutine
For bond, injunction, or stay of injunction	Nonroutine
To reconsider any order of court	
(other than pursuant to subparagraph (5))	Nonroutine
For leave to appeal from interlocutory order,	

pursuant to 28 U.S.C. § 1292(b)	Nonroutine
All other motions	Nonroutine

The following actions by the court shall be handled similarly to the stated procedures for routine or nonroutine motions:

Issuance of orders to show cause pursuant to Circuit Rule 31(c) and (d)	Routine
Discharge of rules to show cause under Fed. R. App.P. 31 (c) and Circuit Rule 31 (c) and (d)	
(granting discharge)	Routine
(denying discharge)	Nonroutine
Orders pursuant to Fed. R. App. P. 34	Nonroutine

(8) The clerk is authorized to reject repetitious motions to reconsider.

## 5. Hearings and Rehearings En Banc

(a) *Request for Answer and Subsequent Request for Vote.* If a petition for rehearing en banc is filed, a request for an answer (which may be made by any Seventh Circuit judge in regular active service or by any member of the panel that rendered the decision sought to be reheard) must be made within 14 days after the distribution of the en banc petition. If an answer is requested, the clerk shall notify the prevailing party that an answer be filed within 14 days from the date of the court's request. Within 10 days of the distribution of the answer, any judge entitled to request an answer, may request a vote on the petition for rehearing en banc.

(b) *Request for Vote When No Answer Requested.* Ordinarily an answer will be requested prior to a request for a vote. A request for a vote on the petition (which may be made by any judge entitled to request an answer) must be made within 14 days from the distribution of the petition. If a vote is so requested, the clerk shall notify the prevailing party that an answer to the petition is due within 14 days.

(c) *Notification to File Answer.* The judge who requests an answer pursuant to paragraph (a) or who requests a vote pursuant to paragraph (b) shall be responsible for having the clerk notify the prevailing party to file an answer to the petition.

(d) *Voting.*

(1) *Majority.* A simple majority of the voting active judges is required to grant a rehearing en banc.

(2) *Time for Voting.* Judges are expected to vote within 14 days of the request for a vote or within 14 days of the filing of the answer pursuant to the request for a vote, whichever is later.

(e) *Preparation of Order.* After the vote is completed, the authoring judge, or the presiding judge of the panel if the author is a visiting judge, will prepare and send to the clerk an appropriate order. Minority positions will be noted in the denial of a petition for rehearing en banc or the denial of a petition for rehearing unless the judges in the minority request otherwise. Minority positions will not be noted in orders granting a rehearing or rehearing en banc unless so requested by the minority judge. An order granting rehearing en banc should specifically state that the original panel's decision is thereby vacated.

(f) *Participants in Rehearings En Banc.* Only Seventh Circuit active judges and any Seventh Circuit senior judge who was a member of the original panel may participate in rehearings en banc.

(g) *Similar Procedures for Hearings En Banc.* Similar voting procedures and time limits shall apply for requests for hearings en banc except that a staff attorney may circulate such a request.

(h) *Distribution of Petitions.* Petitions for rehearing that do not suggest rehearing en banc are distributed only to the panel. Petitions for rehearing en banc are distributed to all judges entitled to vote on the petition.

## **9. Presumptive Times for Action**

Expeditious preparation and release of opinions and orders is important not only to litigants ("Justice delayed is justice denied") but also to the operation of the court. Delay in the preparation of or response to opinions means that other judges must re-read the briefs and re-study the record in order to act conscientiously on their colleagues' drafts. Dispatch in circulating drafts and responding to a colleague's circulations therefore reduces duplicative work and improves the quality of justice. With these considerations in mind, the court establishes the following presumptive times for action, anticipating that in most cases judges will take less time but understanding that circumstances may make it imprudent to adhere to these norms mechanically. Every judge should, and may, take the time required for adequate study and reflection.

(a) A judge assigned to write a draft after a case has been identified at conference as suitable for disposition by a brief unpublished order should circulate

the draft to the other members of the panel within 21 days of the date the case was argued or submitted.

(b) A judge assigned to write a published opinion should circulate the draft to the other members of the panel within 90 days of the date the case was argued or submitted. When the case is unusually complex, extended research is required, or other special circumstances apply, however, the writing judge may extend this time to 180 days by giving appropriate notice to the other members of the panel.

(c) Responding to drafts circulated by other judges is the first order of business. Every judge should respond by approval, memorandum suggesting changes, or notice that a separate opinion is under active consideration within 14 days of the circulation of a draft.

(d) As a rule, writing separate concurring or dissenting opinions takes precedence over all business other than initial responses to newly circulated drafts. Separate opinions should be circulated to the panel within 28 days after the initial response described in part (c) of this procedure.

(e) Once the opinion has issued, judges should act promptly on any further motions. In particular, members of the panel should vote within 14 days on any petition for rehearing. Under Operating Procedure 5, judges have 14 days to request a response to a petition for rehearing en banc, and 14 days to call for a vote on the petition once the response has been received. Once a judge has called for a vote, all other judges should register their votes within 14 days. Once this time (including extensions described below) has passed, and sufficient votes have been received to grant or deny the petition for rehearing or petition for rehearing en banc, the court will enter an order to that effect without waiting for additional responses.

(f) Each judge should establish a tickler system designed to ensure adherence to these norms. When one chambers does not receive a draft, vote or response within the time presumptively established, secretaries or law clerks should inquire. This step not only catches communications lost in transmission but also serves as a backup reminder system.

(g) A judge who believes that additional time is required to permit full consideration should notify the other members of the panel to that effect. If the judge believes that more than 30 days (in the case of opinions) or 14 days (in the case of other actions), in addition to the time presumptively established by this procedure, is essential, the judge also should notify the chief judge of the delay and the reasons for it.

(h) The presiding judge of a panel should reassign the case if the judge initially assigned to draft the order or opinion has not circulated the draft within the time provided by parts (a) and (b) of this procedure, plus the extra time allowed

by part (g), unless in consultation with the assigned author and the chief judge the presiding judge decides that reassignment would delay disposition still further.

(i) If two members of the panel have agreed on an opinion, and the third member does not respond within the time provided by part (c), or does not complete a separate opinion within the time presumptively established by parts (d) and (g), the writing judge should inquire of the third member whether a response is imminent. If further delay is anticipated, the majority should issue the opinion with a notation that the third judge reserves the right to file a separate opinion later.

(j) When the presumptive time for action established by this procedure is 14 days, the time may be extended on notice that a judge is unavailable to act on judicial business. The time specified by this notice is added to the time presumptively established by this procedure.